

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**WEALTH TAX REFERENCE No. 60 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF WEALTH-TAX - Applicant(s)
Versus
DOLLARAI N PORECHA - Respondent(s)

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Appearance :

MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/07/2006**ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

Mr. Manish R. Bhatt, learned counsel for the Revenue. None for the respondent, the Office report shows that the respondent is served.

2. At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question to us for our answer;

“Whether the Appellate Tribunal is right in law and on facts in holding that while valuing partners interest under Rule 2 of the W.T. Rules in the partnership firm, the entire amount of provision of tax without deducting therefrom the advance tax paid should have been deducted ?”.

Learned counsel for the Revenue submits that the Appellate Tribunal relied upon the decision of this Court in the matter of *C.W.T. Vs. Ashok K.*

Parikh, 129 ITR 46, and the Judgment of Bombay High Court in the case of *C.W.T. Vs. Ramkrishna Bajaj (HUF)* (1992) 196 ITR 340 to come to the conclusion that value of the partner's interest in the partnership should be ascertained on the basis of the abovereferred two decisions. He submits that in the matter of *Bharat Hari Singhania Vs. Commissioner of Wealth Tax and Others*, (1994) Vol. 207 ITR 1, the Supreme Court clarified the provisions of law and observed that Andhra Pradesh High Court and Karnataka High Court and Punjab and Haryana High Court had taken a particular view which is on the similar lines of the said Judgment, while, on the other hand, the Gujarat High Court, in *C.W.T. Vs. Ashok K. Parikh* (1981) 129 ITR 46, had taken a different view. The Supreme Court observed that it was enough to indicate that if the said sub-clauses are understood in the manner indicated and clarified by the Apex Court, counsel for the assessee would have no grievance.

3. From the abovereferred observations made by the Supreme Court, it would clearly appear that the Judgment, in the said matter of Ashok K. Parikh (supra), stands impliedly overruled.

4. If that be so, then the order passed by the Income Tax Appellate Tribunal, placing its reliance upon the said Judgment of Ashok K. Parikh (supra), would lose its basic foundation and would become a bad judgment.

5. The Income Tax Appellate Tribunal was not unjustified in relying upon the Judgment of this Court in the matter of Ashok K. Parikh, because, on the said date, that was the law interpreted by the High Court, but, because of the Judgment of the Apex Court, the Judgment of the Income Tax Appellate Tribunal, is required to be set aside.

6. Placing our strong reliance upon the Judgment of the Supreme Court, in the matter of Bharat Hari Singhania, we answer the Reference in favour of the Revenue, set aside the order passed by the Appellate Tribunal, but remand the matter back to the Appellate Tribunal for its decision in accordance with law, in view of the abovereferred Judgment of the Supreme Court. No costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.